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RT

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/319,204	06/30/99	DE LA METTRIE	R 05725.0398

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EXAMINER	
EINSMANN, M	
ART UNIT	PAPER NUMBER
1751	16
DATE MAILED: 10/10/01	

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/319,204	Applicant(s) DE LA METTRIE ET AL.	
	Examiner Margaret Einsmann	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-64, 67 and 69-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 32-64, 67 and 69-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

The request filed on 7/17/2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/319/204 is acceptable and a CPA has been established. An action on the CPA follows.

Applicant's amendment filed on April 24, 2001 has been entered and applicant's remarks considered.

The rejection of claims 32-64, 66-68 and 74 under 35 USC 103(a) as being unpatentable over Yamahatsu, EP 716,846 has been mooted by applicant's amendment incorporating the limit of claim 65 into claim 32.

The rejection of claims 32-64, 66-68 and 73-74 under 35 USC 103(a) as being unpatentable over Yamahatsu in view of Husemeyer has been mooted by applicant's amendments as detailed on pages 10 and 11 of the response of 4/24/2001.

The provisional rejection of claims 32-74 under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 25-65 of copending application 09/319,165 is maintained for the reasons of record as no attempt has been made to overcome this rejection.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 32-64, 67, 69-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cotteret, US 5,514,188 in view of Tsujino, US. 4,961,925.

This rejection is maintained for the reasons set forth in paper #6, mailed 5/9/2000. Additionally, it is applied to claim 73. It is applied to claim 73 because the claimed 2-beta-

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hydroxyethyl-para-phenylenediamine dihydrochloride is not only disclosed in Cotteret but exemplified in examples 1 and 4 in col 7 of Cotteret.

The arguments presented on pages 7 and 8 of the final rejection are hereby incorporated by reference. In the response filed 4/24/2001, applicant further argues that there Tsujino teaches that it would not have been obvious to substitute the enzyme dyeing system of Tsujino for the hydrogen peroxide system of Cotteret because Tsujino teach that there is a tradeoff. . Use of the enzyme system produces less irritation but also inferior dyeing. This argument is not persuasive because the results in Table 1 show otherwise, Applicant has now added peroxidase to his compositions and processes. Note Tsujino's statement "Further, the dyeing properties were improved by the combined use with mutarotose and/or peroxidase rather than by using GOD alone." Note the examples using the combined enzyme systems as now claimed. All of the examples using peroxidase in addition to the dielectron reducing enzyme show the most superior dyeing effect. (Table 1 examples 1-3, 1-5, 1-10) .

Applicant next argues that the interdigit dropping method as described beginning in column 5 line 60 shows lower irritation but that patentee uses a larger amount of sodium bromate solution than enzyme, thus making it an uneven comparison. This argument is not persuasive because this test is not comparing hydrogen peroxide to the enzyme systems, and thus is irrelevant to the instantly claimed compositions and processes. That example refers to hair waving compositions, not hair dyeing compositions.

Claims 75 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamahatsu, EP 716846. Yamahatsu teaches and compositions containing uricase and uric acid and an oxidation dye selected from a list of dyes including para-phenylenediamine compounds

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including N-phenylparaphenylenediamine, para-aminophenol and meta-aminophenol. See page 3 lines 3 et seq. Patentee differs from the instant claims in not showing a working example of a composition containing all three dyes used together. It would have been obvious to a dye chemist to formulate a composition containing the three claimed dyeing components as well as uricase and uric acid because patentee teach all of the listed oxidation dyes as being useful in the dyeing system of his invention, and a hair dye chemist knows that mixtures of oxidation dyes are conventionally used to obtain different nuances of color.

Claims 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are rejected as being redundant as they claim the exact same composition as claim 32, thus they fail to further limit claim 32.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7718 for regular communications and 703-308-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Margaret Einsmann
Primary Examiner
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October 9, 2001